



Reprinted
March 1, 2005

SENATE BILL No. 453

DIGEST OF SB 453 (Updated February 28, 2005 7:59 pm - DI 97)

Citations Affected: IC 24-4.

Synopsis: Rental car agreements. Specifies, for purposes of the law regulating contract provisions under which a motor vehicle rental company agrees to waive claims against the renter for damage to a rented motor vehicle, that "damage" includes damage not caused by collisions.

Effective: July 1, 2005.

Clark

January 18, 2005, read first time and referred to Committee on Corrections, Criminal, and Civil Matters.
February 24, 2005, amended, reported favorably — Do Pass.
February 28, 2005, read second time, amended, ordered engrossed.

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SB 453—LS 7843/DI 97+



First Regular Session 114th General Assembly (2005)

PRINTING CODE. Amendments: Whenever an existing statute (or a section of the Indiana Constitution) is being amended, the text of the existing provision will appear in this style type, additions will appear in **this style type**, and deletions will appear in ~~this style type~~.

Additions: Whenever a new statutory provision is being enacted (or a new constitutional provision adopted), the text of the new provision will appear in **this style type**. Also, the word **NEW** will appear in that style type in the introductory clause of each SECTION that adds a new provision to the Indiana Code or the Indiana Constitution.

Conflict reconciliation: Text in a statute in *this style type* or ~~this style type~~ reconciles conflicts between statutes enacted by the 2004 Regular Session of the General Assembly.

SENATE BILL No. 453

A BILL FOR AN ACT to amend the Indiana Code concerning trade regulation.

Be it enacted by the General Assembly of the State of Indiana:

1 SECTION 1. IC 24-4-9-2 IS AMENDED TO READ AS FOLLOWS
2 [EFFECTIVE JULY 1, 2005]: Sec. 2. As used in this chapter, "~~collision~~
3 "damage waiver" or "waiver" means any contract or contract provision,
4 whether separate from or a part of a rental agreement, under which a
5 rental company agrees to waive any or all claims against the renter for
6 any **physical or mechanical** damage, **as defined in section 13 of this**
7 **chapter**, to the rented vehicle during the term of the rental agreement.

8 SECTION 2. IC 24-4-9-9 IS AMENDED TO READ AS FOLLOWS
9 [EFFECTIVE JULY 1, 2005]: Sec. 9. A rental company may provide
10 in a rental agreement that a ~~collision~~ damage waiver does not apply
11 under any of the following circumstances:

12 (1) The damage is caused by the authorized driver:

13 (A) intentionally; or

14 (B) through willful or wanton misconduct.

15 (2) The damage arises out of the authorized driver's operation of
16 the vehicle while intoxicated or under the influence of an illegal
17 drug.

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(3) The damage is caused while the authorized driver is engaged in a speed contest, race, road rally, test, or driver training activity.

(4) The renter provided the rental company with fraudulent or false information and the rental company would not have rented the vehicle if the rental company had received true information.

(5) The damage arises out of vandalism or theft of the rented vehicle caused by the negligence of the authorized driver, except that the possession by the authorized driver, at the time of the vandalism or theft, of the ignition key furnished by the rental company shall be prima facie evidence that the authorized driver was not negligent.

(6) The damage arises out of the use of the vehicle in connection with conduct that could be properly charged as a felony.

(7) The damage arises out of the use of the vehicle to carry persons or property for hire or to tow or push anything.

(8) The damage arises out of the use of the vehicle outside the United States, unless the use is specifically authorized by the rental agreement.

(9) The damage arises out of the use of the vehicle by an unauthorized driver.

SECTION 3. IC 24-4-9-10 IS AMENDED TO READ AS FOLLOWS [EFFECTIVE JULY 1, 2005]: Sec. 10. (a) A rental company may offer and sell, for a separate charge, a ~~collision~~ damage waiver that is set forth in the rental agreement and that relieves an authorized driver of any liability for damage that the authorized driver might otherwise incur.

(b) Each rental agreement that contains a ~~collision~~ damage waiver must disclose the following information in plain language printed in type at least as large as 10 point type:

(1) That the waiver is optional.

(2) That the waiver entails an additional charge.

(3) The actual charge per day for the waiver.

(4) All restrictions, conditions, and provisions in or endorsed on the waiver.

(5) That the renter or other authorized driver may already be sufficiently covered for damage to the rental vehicle and should examine the renter's or authorized driver's automobile insurance policy to determine whether the policy provides coverage for ~~collision~~ damage, loss, or loss of use to a rented vehicle, and the amount of the deductible.

(6) That by entering into the rental agreement, the renter may be liable for damage, loss, or loss of use to the rental vehicle.

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1 ~~resulting from a collision.~~

2 (c) A rental company may not rent a vehicle to a renter until the
3 renter has acknowledged in writing that the renter understands the
4 information set forth in subsection (b). The acknowledgment must be
5 written in plain language on the rental agreement and must be initialed
6 by the renter.

7 SECTION 4. IC 24-4-9-13 IS AMENDED TO READ AS
8 FOLLOWS [EFFECTIVE JULY 1, 2005]: Sec. 13. A rental company
9 and renter may agree that the renter will be responsible for no more
10 than all of the following:

11 (1) Physical ~~or mechanical~~ damage to the rented vehicle up to its
12 fair market value ~~as determined in the customary market for the~~
13 ~~sale of that vehicle resulting from collision~~ regardless of the cause
14 of damage.

15 **(2) Mechanical damage to the rental vehicle, up to and**
16 **including the rental vehicle's fair market value, resulting**
17 **from:**

18 **(A) a collision;**

19 **(B) an impact; or**

20 **(C) another incident that is caused by the renter's or**
21 **authorized driver's deliberate act.**

22 ~~(2) (3)~~ (3) Loss due to theft of the rental vehicle up to its fair market
23 value. ~~as determined in the customary market for the sale of that~~
24 ~~vehicle.~~ However, the renter shall be presumed to have no
25 liability for any loss due to theft if the renter or authorized driver:

26 (A) has possession of the ignition key furnished by the rental
27 company or establishes that the ignition key furnished by the
28 rental company was not in the vehicle at the time of the theft;
29 and

30 (B) files an official report of the theft with the police or other
31 law enforcement agency within twenty-four (24) hours of
32 learning of the theft and reasonably cooperates with the rental
33 company, police, and other law enforcement agency in
34 providing information concerning the theft.

35 The presumption set forth in this subdivision is a presumption
36 affecting the burden of proof, which the rental company may
37 rebut by establishing that a renter or other authorized driver
38 committed or aided and abetted in the commission of the theft.

39 ~~(3) (4)~~ (4) Physical damage to the rented vehicle up to its fair market
40 value ~~as determined in the customary market for the sale of that~~
41 ~~vehicle,~~ resulting from vandalism occurring after, or in
42 connection with, the theft of the rented vehicle. However, the

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renter is presumed to have no liability for any loss due to vandalism if the renter or authorized driver:

(A) has possession of the ignition key furnished by the rental company or establishes that the ignition key furnished by the rental company was not in the vehicle at the time of the vandalism; and

(B) files an official report of the vandalism with the police or other law enforcement agency within twenty-four (24) hours of learning of the vandalism and reasonably cooperates with the rental company, police, and other law enforcement agency in providing information concerning the vandalism.

The presumption set forth in this subdivision is a presumption affecting the burden of proof, which the rental company may rebut by establishing that a renter or other authorized driver committed or aided and abetted in the commission of the vandalism.

~~(4)~~ (5) Physical damage to the rented vehicle and loss of use of the rented vehicle up to its fair market value determined in the customary market for the sale of that vehicle, resulting from vandalism unrelated to the theft of the rented vehicle.

~~(5) Physical damage resulting from collision to the rented vehicle and loss of use of the rented vehicle resulting from collision up to its fair market value, as determined in the customary market for the sale of that vehicle, resulting from the use of the rental vehicle by an unauthorized driver.~~

(6) Loss of use of the rented vehicle, if the renter is liable for damage.

(7) Actual charges for towing, storage, and impoundment fees paid by the rental company, if the renter is liable for damage.

(8) Reasonable attorney's fees related to the enforcement of the rental agreement.

(9) An administrative charge, including the cost of appraisal and all other costs and expenses incident to the damage, loss, loss of use, repair, or replacement of the rented vehicle.

SECTION 5. IC 24-4-9-18 IS AMENDED TO READ AS FOLLOWS [EFFECTIVE JULY 1, 2005]: Sec. 18. Notwithstanding section 17(3) of this chapter, a rental company may charge for the rental of a vehicle, in addition to the rental rate, taxes, airport fees, and any mileage charge, an additional charge for an item or service provided during the rental of the vehicle if the renter can avoid incurring that additional charge by choosing not to obtain the item or utilize the service. Items and services for which the rental company

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may impose an additional charge under this section include the following:

- (1) Optional insurance or accessories requested by the renter.
- (2) Service charges assessed when the insured returns the vehicle to a location other than the location where the vehicle was rented.
- (3) A charge for refueling a vehicle that is returned with less fuel in its tank than when the rental period began.
- (4) A ~~collision~~ damage waiver that conforms to the provisions of this chapter.

SECTION 6. IC 24-4-9-22 IS AMENDED TO READ AS FOLLOWS [EFFECTIVE JULY 1, 2005]: Sec. 22. A rental company may not engage in any unfair, deceptive, or coercive act to induce a renter to purchase a ~~collision~~ damage waiver or any other optional good or service.

SECTION 7. IC 24-4-9-23 IS AMENDED TO READ AS FOLLOWS [EFFECTIVE JULY 1, 2005]: Sec. 23. (a) If a rental company enters into at least one (1) rental agreement containing a ~~collision~~ damage waiver in Indiana during a calendar year, the rental company shall compile and maintain the following statistics concerning all the rental agreements the rental company enters into in Indiana during that calendar year:

- (1) The total expenses incurred by the rental company as a result of damage to vehicles that is caused while the vehicles are subject to the rental agreements.
- (2) The total amount of the expenses referred to in subdivision (1) for which the rental company is indemnified.
- (3) The total number of vehicles subject to the rental agreements, multiplied by the total number of days of the calendar year during which the vehicles are subject to the rental agreements.

(b) The expenses on which a rental company must compile statistics under subsection (a)(1) are the following:

- (1) The cost that the rental company pays to replace damaged vehicle parts, less all discounts and price reductions or adjustments received by the rental company.
- (2) The cost of labor paid by the rental company to replace damaged vehicle parts.
- (3) The cost of labor paid by the rental company to repair damaged vehicle parts.
- (4) The loss of use of the damaged vehicles, which must be determined according to the following formula:

STEP ONE: For each damaged vehicle, multiply the time necessary for the repair and replacement of damaged parts by

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1 eighty percent (80%).
2 STEP TWO: For each damaged vehicle, multiply the product
3 of STEP ONE by the rental rate set forth in the rental
4 agreement to which the vehicle was subject when damaged.
5 STEP THREE: Total the figures determined under STEP TWO
6 for all of the damaged vehicles.
7 (5) Actual charges for towing, storage, and impound fees paid by
8 the rental company.
9 (c) The director of the division of consumer protection appointed
10 under IC 4-6-9-2 may request that rental companies provide the
11 director with statistics compiled and maintained under subsection (a).
12 (d) Upon receiving a request under subsection (c), a rental company
13 shall provide the director of the division of consumer protection with
14 the statistics that are requested by the director.

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COMMITTEE REPORT

Madam President: The Senate Committee on Corrections, Criminal, and Civil Matters, to which was referred Senate Bill No. 453, has had the same under consideration and begs leave to report the same back to the Senate with the recommendation that said bill be AMENDED as follows:

Page 3, line 21, delete "or omission." and insert ".".

and when so amended that said bill do pass.

(Reference is to SB 453 as introduced.)

LONG, Chairperson

Committee Vote: Yeas 8, Nays 0.

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SENATE MOTION

Madam President: I move that Senate Bill 453 be amended to read as follows:

Page 1, line 6, after "any" insert "**physical or mechanical**".

Page 1, line 6, after "damage" insert "**, as defined in Section 13 of this chapter,**".

(Reference is to SB 453 as printed February 25, 2005.)

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